92-604

Supreme Court, U.S.
FILED
AUG 11 1992
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

HARTFORD ACCIDENT & INDEMNITY COMPANY,
APPELLANT,

v.

WORKERS' COMPENSATION APPEALS BOARD OF STATE OF CALIFORNIA,
APPELLEE,

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

DAVID D. BOVETT
Law Offices of David D. Bovett
1152 N. Mountain Ave., Ste: 104
Upland, CA 91786
(714) 931-3153

Counsel for Appellant

August 10, 1992

QUESTIONS PRESENTED

1) Has appellant been denied due process of law -- in denial of opportunity to be heard -- because of failure of proper service of judgement amounting to lack of notice?

2) Does the scheme for effecting notice of final orders established by the State of California, Department of Industrial Relations, Workers' Compensation Appeals Board, in and of itself, fail to satisfy the requirements of due process in not effecting the best notice possible?

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JURISDICTIONAL STATEMENT

Pursuant to Rules 12 and 15 of the Rules of the Supreme Court of the United States, appellant, Hartford Accident and Indemnity Company, files this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review the order entered by the Supreme Court of the State of California in this case and should exercise jurisdiction herein.

A Petition for Review was denied by the Supreme Court of the State of California IN BANK (Panelli, J., of the opinion that it should be granted).

OPINIONS BELOW

A copy of the IN BANK decision of the Supreme Court of the State of California denying the Petition for Review dated 5/13/92 is attached as Appendix "A".

A copy of the decision of the Fourth Appellate District, Division Two of the Court of Appeals for the State of California denying Petition for Review dated 3/20/92 is attached as Appendix "B".

A copy of the Order Denying Reconsideration from the Workers' Compensation Appeals Board, Reconsideration Unit at San Francisco, California, dated 9/13/91 is attached as Appendix "C".

GROUNDS FOR JURISDICTION

The judgement of the Supreme Court of the State of California became final when the Petition for Review was denied by the Court IN BANK on 5/13/92. This Court's jurisdiction is invoked under Title 28, United States Code, §.1257(2).

QUESTIONS PRESENTED

1) Has appellant been denied due process of law -- in denial of opportunity to be heard -- because of failure of proper service of judgement amounting to lack of notice?

2) Does the scheme for effecting notice of final orders established by the State of California, Department of Industrial Relations, Workers' Compensation Appeals Board, in and of itself, fail to satisfy the requirements of due process in not effecting the best notice possible?

CONSTITUTIONAL AND STATUTORY PROVISIONS; AND RULES

This case involves the following:

Sixth Amendment, United States Constitution:
Denial of right to counsel.

Fifth and Fourteenth Amendments, United States Constitution:
Due process of law.

Rules of Practice and Procedure of the State of California Department of Industrial Relations, Workers' Compensation Appeals Board, under California Administrative Code, Title 8.

§. *10308. Official Address Record.*
The Workers' Compensation Appeals Board shall maintain in each case file an official address record which shall contain the names and addresses of all parties and their attorneys or agents of record.

§. *10500. Service by Workers' Compensation Appeals Board. (Relevant portion only)*
The Workers' Compensation Appeals Board shall serve a copy of the notice of time and place of hearing and all findings, orders, decisions and awards upon the parties and their attorneys or agents of record by mail at their addresses of record or by personal service.

§.10520. Proof of Service by Workers' Compensation Appeals Board.

Proof of service by the Workers' Compensation Appeals Board may be made by endorsement on the document served, setting forth the fact of service on the persons listed on the official address record on the date of service. The endorsement shall state whether such service was made personally or by mail, the date of service and the signature of the person making the service.

California Labor Code §.5316. Service of notice, order, or decision. (Relevant portion only)

Any notice, order, or decision required by this division to be served upon any person either before, during, or after the institution of any proceeding before the appeals board, may be served in the manner provided by Chapter 5, Title 14 of Part 2 of the Code of Civil Procedure, unless otherwise directed by the appeals board. In the latter event the document shall be served in accordance with the order or direction of the appeals board.

California Labor Code §.5903. Time for filing; grounds. (Relevant portion only)

At any time within 20 days after the service of any final order, decision, or award made and filed by the appeals board or a workers' compensation judge granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration upon one or more of the following grounds and no other.

California Labor Code §.5950. Application for writ; time.

Any person affected by an order, decision, or award of the appeals board may, within the time limit specified in this section, apply to the Supreme

Court or to the court of appeal for the appellate district in which he resides, for a writ of review, for the purposes of inquiring into and determining the lawfulness of the original order, decision, or award or of the order, decision, or award following reconsideration. The application of writ for review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeals board's own motion, within 45 days after the filing of the order, decision, or award following reconsideration.

California Code of Civil Procedure §.1013a. Service by mail; proof

Proof of service by mail may be made by one of the following methods:

(1) An affidavit setting forth the exact title of the document served and filed in the cause, showing the name and residence or business address of the person making the service, showing that he or she is a resident of or employed in the county where the mailing occurs, that he or she is over the age of 18 years and not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(2) A certificate setting forth the exact title of the document served and filed in the cause, showing the name and business address of the person making the service, showing that he or she is an active member of the State Bar of California and is not a party the cause, and showing the date and place of deposit in the mail, the name and address of the person served

as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(3) An affidavit setting forth the exact title of the document served and filed in the cause, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a resident of, or employed in, the county where the mailing occurs, (C) that he or she is over the age of 18 years and not a party to the cause, (D) that he or she is readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, (E) that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, (F) the name and address of the person served as shown on the envelope, and the date and place of business where the correspondence was placed for deposit in the United States Postal Service, and (G) that the envelope was sealed and placed for collection and mailing on that date following ordinary business practices. Service was made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the affidavit.

(4) In case of service by the clerk of a court of record, a certificate by that clerk setting forth the exact title of the document served and filed in the cause, showing the name of the clerk and the name of the court of which he or she is the clerk, and that he or she is not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the

envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

STATEMENT OF THE CASE

This case originated in the California Workers' Compensation Appeals Board. Presently joined parties include William Liles (applicant for benefits); defendant Direct Transit, Inc. (a South Dakota-based employer); defendant Hartford Accident & Indemnity Company (as joined, an insurer with office in St. Paul, Minnesota, hereinafter referred to as "Hartford").

Trial proceedings were held on 5/29/91, with Findings and Orders of the administrative law Judge of 7/3/91; not served on Hartford's counsel but obtained from Mr. Liles' counsel in a chance meeting (on 7/22/91) some seven days prior to the time limit to appeal at the Workers' Compensation Appeals Board Reconsideration Unit (20 days after service of Final Orders plus five days for mail [Cal. Labor Code §.5903]).

On 7/29/91, Hartford filed a Petition for Reconsideration (a first-level administrative appeal, taken from Trial level proceedings).

On 9/13/91, an Order Denying Reconsideration was issued by the Workers' Compensation Appeals Board, Reconsideration Unit, San Francisco. Said Order was never served on counsel for Hartford.

On 8/20/91, an "Order Extending Time on Petition for Reconsideration" was filed and was received by counsel for Hartford (on 8/22/91). After the "Order Extending

Time on Petition for Reconsideration" was received, counsel for Hartford heard nothing more. Counsel for Hartford made due diligent effort after hearing and receiving nothing further to ascertain the status of the Appeal. Such efforts included phone calls and direct correspondence to the Workers' Compensation Appeals Board, and requests of opposing counsel.

On 1/3/92, counsel for Hartford first received a copy of said Order of 9/13/91 via facsimile transmission from Mr. Liles' counsel after repeated requests.

On 2/18/92, the Petition for Writ of Certiorari to Review Decision After Reconsideration of the Workers' Compensation Appeals Board was filed with the Court of Appeals, State of California, Fourth Appellate District, Division Two, within 45 days of notice of the 9/13/91 Order.

On 3/20/92, the petition for writ of review was denied as being untimely filed, purportedly not compliant with California Labor Code §.5950.

On 3/30/92, a Petition for Review was filed with the Supreme Court of the State of California. Said petition sought review of the lower Court's finding that the Petition for Writ of Review was untimely filed.

On 5/13/92, the Supreme Court of the State of California issued an IN BANK decision denying the Petition for Review.

SUBSTANTIALITY OF FEDERAL QUESTION

I.

There are significant and recurring problems concerning the State of California, Department of Industrial Relations, Workers' Compensation Appeals Board's (hereinafter referred to as "WCAB") efforts to comply with the regulations adopted by the WCAB allowing themselves a separate standard for proof of service (Cal. Admin. Code, Title 8, §.10520). Although allowed for by California Labor Code §.5316, the lack of consistency demonstrated by the WCAB in service of documents as prescribed by §.10520 has created a systematic denial of due process for the parties governed by the WCAB, in the resultant failure of notice of judgements.

In actions before the WCAB, parties are required to serve their documents in strict compliance with Cal. Code of Civil Procedure §.1013a. However, with the creation of Cal. Admin. Code, Title 8, §.10520, the WCAB has allowed itself the luxury of:

> ". . .endorsement on the document served, setting forth the fact of service on the persons listed on the official address record on the date of service."

The lack of identification and itemization of parties served, as would be required by Cal. Code of Civil Procedure §.1013a, does not give parties notice as to potentially defective service. Without informed notice on all parties, one party to the action may be unknowingly or unwittingly (or even intentionally) omitted from service. The "endorsement" does not require that the WCAB list the names and addresses of those served on the document.

The document simply bears the notation:

> "Served by mail on all parties
> listed on Official Address Record"

The Official Address record is not served together with the document, so parties cannot be sure who was served. This situation creates undue hardship and denial of due process. Parties to an action before the WCAB may be subject to unnecessary delays in the hearing of their cause by defective service. Parties may not, as in the instant cause, ever receive timely notice of judgement, effectively (if the present judgement stands) denying the right to appeal. And without knowing who was served, opposing parties will not be apprised of said defective service. If service by the WCAB was in compliance with the strict standards of Cal. Code of Civil Procedure §.1013a, all parties would have notice as to who was served in each action, thereby allowing "party-remedy." If the WCAB is unable to provide complete and accurate service, the parties to the actions before the WCAB would be afforded the opportunity to notify opposing parties when service by the WCAB is noted to be defective.

The continuing pattern of defective service by the WCAB has left behind a trail of appealed cases with mixed results.

In the instant case, an unverified copy of "Workers' Compensation Appeals Board Official Address Record" was provided by Thomas J. McBirnie, Assistant Secretary, WCAB, San Francisco with an unverified letter to the Clerk, Court of Appeal, Fourth Appellate District, Division Two. The Official Address Record provided was represented as being a copy of the Official Address Record made at the time of service of the WCAB's 9/13/91 order. Upon examination of the address record, it is found to be defective in multiple respects:

First, the list appears to be computer-generated and represents itself as being "printed 2/7/91." However, McAlpin, Doonan & Seese (counsel for Direct Transit, Inc.), was hand-written onto the address record. Surely, counsel that had represented the employer since long before the printed date of 2/7/91, would have been computer-generated as well.

Second, the record contains an entry showing a change of address for David D. Bovett (counsel for Hartford Accident and Indemnity Company) with no notation as to when the address was changed or who changed it.

Third, on 2/8/91, there was a "Notice of Hearing" that was computer-generated, listing service by "J. Hillard." There is no notation on the "Official Address Record" indicating service of this notice and the parties served.

Fourth, on 2/14/91, there was an entry for "MOH" which would appear to indicate "Minutes of Hearing." Boxes were checked to indicate service. However, it would appear that Hartford Accident & Indemnity Company was omitted from this service.

Fifth, on 7/3/91, there was an entry of "Summary" which would appear to indicate Summary of Evidence. There was a "Minutes of Hearing and Summary of Evidence" for the hearing of 5/29/91.

There was no entry for the "Minutes of Hearing" for the 5/29/91 trial. The "Minutes of Hearing and Summary of Evidence" for the trial of 5/29/91 were not dated or signed by the administrative law judge (hereinafter referred to as "WCJ"). The only date mark on the document other than that of the trial date was 6/6/91. There is no entry on the Official Address Record of 6/6/91

for a "Minutes of Hearing." Additionally, the appearances noted by the judge incorrectly list the "Law Offices of Stephen G. Knutzch [sic] & Associates, by David D. Bovett, Attorney for Hartford Accident & Indemnity Co." This notation by the judge is not consistent with the Official Address Record and further confuses the issue of service on parties of record.

Additionally, for unknown reasons, the State of California Uninsured Employers' Fund (which had been served previously and subsequently) was not checked as having been served with the "Summary."

Further, there was a listing for a "F&A" with the date of 7/3/91. This would appear to indicate a "Findings & Award." The Findings and Award and Opinion on Decision were not served on the Law Offices of David D. Bovett, although a check mark entry near the box was made to indicate such. It is possible that service of said documents may have been made consistent with the WCJ's "Minutes of Hearing and Summary of Evidence," thereby serving the Law Offices of Stephen G. Krutzsch & Associates as attorneys for Hartford.

Sixth, there was an 8/12/91 "Report and Recommendation" by the WCJ that was served in partial compliance with Cal. Code of Civil Procedure §.1013a. The parties served were listed on the last (signature) page of the documents. However, it is not indicated as to how the parties were served. Additionally, Liles (applicant) and Hartford (as joined insurer) were not listed as served.

Seventh, on 8/20/91, the "Order Extending Time on Petition(s) for Reconsideration" was not entered on the official address record. Instead, this order was served in partial compliance with Cal. Code of Civil Procedure §.1013a. The parties served were listed on the face of the

document. However, only two of the parties to the cause were served.

Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Board (1978) 86 Cal.App.3d 1, holds that when notice has not been served on a party or on the party's attorney at their address of record, the time for filing a petition shall begin to run no earlier than the date on which the notice was actually received.

Appellant Hartford was denied due process of law in the denial, as untimely filed, of appellant Hartford's Petition for Writ of Certiorari to Review Decision After Reconsideration of the Workers' Compensation Appeals Board. The Court cited Southwest Airlines v. Workers' Compensation Appeals Board. (1991) 234 Cal.App.3d 1421, as authority for a finding of lack of jurisdiction to consider the petition. In Southwest Airlines, the California Court of Appeals cited State Farm Fire & Casualty Co. v. Workers' Compensation Appeals Board, (1981) 119 Cal.App.3d 193, 196 [173 Cal.Rptr. 778], and stated as follows:

> "In State Farm, supra, 119 Cal.App.3d 193, the other authority relied upon in the Villa decision, the petition for writ of review was filed six months after the Board's order denying reconsideration. The petitioner, however asserted without contradiction that it did not receive notice of the Board's order until 44 days before the petition was filed, after it directed letters of inquiry to the Board. The Board did not question this assertion and informed the Court of Appeal that it had no objection to its treating the petition as timely filed. (State Farm, *supra*, 119 Cal.App.3d 193, 195.)"

> "State Farm thus does not stand for the proposition that the 45-day period set forth in section 5950 ordinarily starts to run from service of the Board's order. Rather, it sets forth an exception to the rule, dictated by the requirements of due process, for the unusual situation where no notice has been received during the statutory period, and in fact supports both our view that ordinarily the time period commences to run upon the denial of reconsideration and the proposition that the administrative regulations do not affect this rule."

Opposing counsel agreed that Hartford was denied due process in their "Answer to Petition for Writ of Certiorari" and supported that the California Court of Appeals had jurisdiction to consider the Petition for Writ of Certiorari to Review the Decision After Reconsideration.

> "Based upon the allegation of David D. Bovett, the counsel for HARTFORD to the effect that he did not receive notice of the Order Denying Reconsideration until January 3, 1992, when the faxed transmittal was sent by attorney for Applicant to the Law Offices of David D. Bovett, this Court does have the jurisdiction to consider the Petition of HARTFORD." (Answer of Direct Transit, Inc., 3/12/92, at p.4, lines 10-15)

Opposing counsel further cited the following proposition to support their argument:

"As stated in the case of Valley Vista Land Co. v. Nipomo Water and Sewer Co., (1967) 255 Cal.App.2d 172, 63 Cal.Rptr. 78:

"Where notice of entry of judgment in case involving three parties was misaddressed to the attorney of one of the parties, and such misaddressed notice was never received, statute requiring the notice of entry of judgment be mailed to "all parties" who have appeared, was not complied with, and hence appeals of the two parties who did not prevail in the action were timely notwithstanding that notice of such appeals were filed more than 60 days after entry of the judgment."

Liles' counsel did not respond to the Petition for Writ or to the request of the Court of Appeals for response and therefore by his silence does not appear to object to contentions of the parties.

The instant case differs from State Farm, in that an "Assistant Secretary, WCAB" contends by unverified letter that notices were mailed to counsel for Hartford. In the letter, the clerk acknowledges that the record of the WCAB address list is not entirely accurate.

Appellant does not oppose the clerk's belief that he mailed the orders in accordance with office procedures; however, the clerk's record reflects a lack consistency and due diligence in properly serving all parties to the action.

Appellant does contend that the clerk's declaration of "mailing" does not constitute receipt of the Order by appellant. Appellant further asserts that the clerk's own declarations support the authority cited in Valley Vista Land Co., *supra*.

Appellant contends that the clerk's action of mailing the WCAB's Order Denying Reconsideration to "the

address shown on his letterhead" is not consistent with the Rules of Practice and Procedure as outlined in Cal. Labor Code §.5316, Cal. Admin. Code, Title 8, §.10500 *et seq.*

The opinion in Triumph Precision Products, Inc. v. Insurance Company of North America (1979) 91 Cal.App.3d 362 states at p 365:

> "Where the envelope containing the notice is improperly addressed, it is as though notice were never mailed by the clerk. (Valley Vista Land Co. v. Nipomo Water & Sewer Co., *supra*, at pp. 173-174.) The ineffectiveness of the first notice mailed in the case at bench pursuant to section 664.5 is thus manifest. As reasoned above, Triumph's notice of appeal must consequently be deemed to have been timely filed."

In denying the Petition for Writ of Review, the Court of Appeals of the State of California, Fourth Appellate District, Division Two states that "petitioner failed to make an adequate showing by specific, factual declarations." However, appellant does contend that an adequate showing by specific and factual declarations was made and that denial by the Court of Appeals is a denial of its due process rights.

The denial by the California Supreme Court of review of the appellant's Petition for Review, and denial by the Court of Appeals of the State of California, Fourth Appellate District, Division Two, of review of the appellant's Petition for Writ of Certiorari to Review Decision After Reconsideration of the Workers' Compensation Appeals Board is in conflict with the authorities cited herein.

Appellant Hartford was denied right to counsel in derogation of the Sixth Amendment to the Constitution of the United States, as Hartford's counsel of record was not properly and timely served with notices, pleadings, or other documents by the respondent Workers' Compensation Appeals Board.

Review by the Court is necessary on the grounds that the decision of the Court of Appeals does not comport with the authorities cited herein, and this Court's ruling is necessary to secure uniformity of application of the cases cited herein. Further, reversal is necessary to ensure appellant's Constitutional rights of due process in notice and right to appeal, in the Fifth Amendment and as applied to the States through the Fourteenth Amendment.

II.

Does the scheme for effecting notice of final orders established by the State of California, Department of Industrial Relations, Workers' Compensation Appeals Board, in and of itself, fail to satisfy the requirements of due process in not effecting the best notice possible?

California Code of Civil Procedure §.1013 provides for standards of service by mail by parties. California Labor Code §.5316 and the California Administrative Code, Title 8, §.10500 *et seq.* allow the California Workers' Compensation Appeals Board a lesser standard of service and effectively lesser likelihood of actual notice, violative of due process.

The issue of denial of due process by defective service or notice has been raised in other venues with the same underlying theme.

> "Due process is violated when attorney of record, through no fault of his own, is denied notice of

critical determination in client's case, and by reason thereof fails to take procedural steps necessary to preserve his client's rights." Hall v. Home Furniture Co., (1986) 724 P.2d 94.

"Due process, for purposes of service of process, requires notice reasonably calculated under all circumstances to apprise interested parties of pendency of action and to afford them opportunity to present objection." Carson v. Northstar Development Co., (1991) 814 P.2d 217, 62 Wash.App. 310

Is the method for service by the State of California, Department of Industrial Relations, Workers' Compensation Appeals Board reasonably calculated under all circumstances to effect notice upon the parties to an action? The litany of cases[1] challenging defective service would indicate that something in the regulations and/or application is lacking. If notice were in compliance with the California Code of Civil Procedure, service by the WCAB would include a listing of the parties served and their addresses. Notice in this manner could, by all parties to an action, be determined to be defective in time to correct said defect of service, thereby eliminating unnecessary delays and litigation.

Review by the Court is considered necessary to secure uniformity of decision and settle an important question of law; further, to assure the minimum requisite

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[1]Since the enactment of the current WCAB service policy, preliminary research notes some twenty plus cases challenging service of notice. A complete listing will be provided in brief of appellant.

notice fundamental under the Fifth and Fourteenth Amendments to the Constitution of the United States.

CONCLUSION

Appellant Hartford simply desires the opportunity to be heard. Hartford's attorney was not served the Final Order of 9/13/91 denying reconsideration from which a Petition for Writ of Review to the Court of Appeals of the State of California was taken. There was no notice; hence, no opportunity to appeal. Appellant respectfully requests that this Court enforce appellant's Constitutional due process rights and compel the Court of Appeals of the State of California to accept the Petition for Writ of Certiorari as timely filed with a writ issuing from the Supreme Court of the State of California to the Court of Appeals ordering the petition to be heard.

For the above reasons, a Writ should issue and review be granted, and that this Court order the matter remanded for review of the Writ of Certiorari to Review Decision After Reconsideration as timely filed before the Court of Appeals of the State of California, Fourth Appellate District, Division Two.

Dated: August 10, 1992

Respectfully submitted,

David D. Bovett
Law Offices of David D. Bovett
1152 N. Mountain Ave., Ste. 104
Upland, CA 91786

Attorney for Appellant

APPENDICES

APPENDIX A

Fourth Appellate District, Division Two, No. E010720
S025850

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

HARTFORD ACCIDENT & INDEMNITY, Petitioner,

v.

WORKERS' COMPENSATION APPEALS BOARD
Et Al., Respondent.

FILED: May 13, 1992
Supreme Court
Robert Wandruff Clerk, Deputy

Petition for review DENIED.
Panelli, J. is of the opinion the petition should be granted.

/s/ LUCAS, Chief Justice

APPENDIX B

APPENDIX B

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

HARTFORD ACCIDENT & INDEMNITY,)
Petitioner,)
v.)
WORKERS' COMPENSATION APPEALS BOARD OF)
THE STATE OF CALIFORNIA; WILLIAMS LILES,)
DIRECT TRANSIT, INC.,)
Respondent.)
)

E010720
WCAB NO. 88 SBR 143098

FILED: March 20, 1992
Court of Appeal Fourth District

THE COURT:

The petition for writ of review is DENIED as being untimely. (Labor Code, §5950.) The petition was filed more than 45 days after the Board denied the petition for reconsideration; thus, this court lacks jurisdiction to consider the petition. (*Southwest Airlines v. Workers' Compensation Bd.* (1991) 234 Cal.App.3d 1421, 1424.) Moreover, petitioner has filed to make an adequate showing by specific, factual declarations that the application of the 45-day filing deadline under the circumstances of this case would result in the violation of its due process rights. (State Farm Fire & Casualty Co. v. Workers' Comp. Appeals Bd. (1981) 119 Cal.App.3d 193.)

/s/ Dabney, Acting P.J.

cc:
W.C.A.B., P.O. Box 6759, San Francisco, CA 94101 (2)

W.C.A.B.
303 W. Third St.,#640
San Bernardino, CA 92401

Richard D. Wooley
303 W. Mission Blvd.
Pomona, CA 91766

McAlpin, Doonan & Seese
211 S. Citrus Ave.
Covina, CA 91723

Hartford Accident & Ind.Co.
2600 Eagen Woods Dr., #370
St. Paul, MN 55121

David D. Bovett
1152 N. Mountain Ave.,#104
Upland, CA 91786

COPY

APPENDIX C

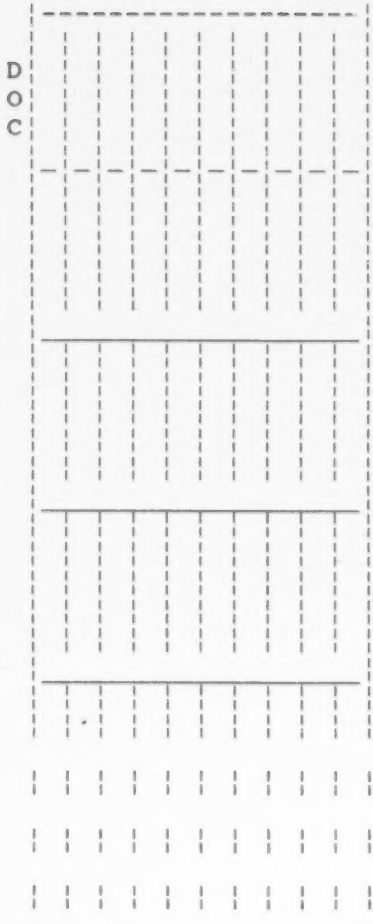
APPENDIX C

Note: Original attached to provide handwritten check mark notations on this form. Handwritten notations are not reflected on typographic reproduction. It was not possible to reproduce random markings done by handwritten notations.

WORKERS COMPENSATION APPEALS BOARD
OFFICIAL ADDRESS RECORD

PRINTED: 02/07/91
PAGE 1

SERVICE WCAB CASE NBR: SBR 0143098

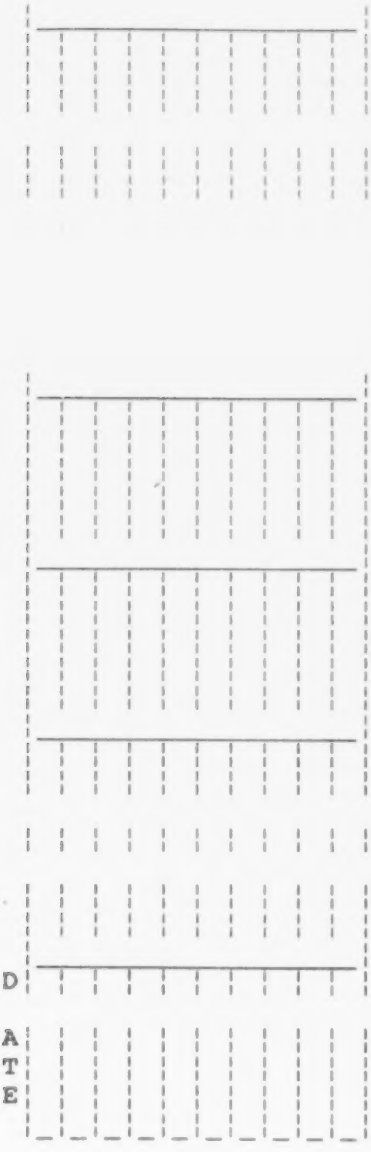


MOD DATE: 05 03 90
INJURED WORKER: 092 34 3595
WILLIAM LILES
220 E 51ST STREET
SAN BERNARDINO CA 92404

JOINED: 05 03 90
LAWFIRM FOR INJURED WORKER
RICHARD WOOLEY
303 WEST MISSION BLVD
POMONA CA 91766

EMPLOYER: JOINED: 05 03 90
DIRECT TRANSIT
P O BOX 1858
SIOUX CITY IA 51100

INSURER: JOINED: 06 07 90
HARTFORD ACCIDENT & INDEMNITY CO.
MICHAEL BAUMANN, CLAIMS DEPT
2066 EAGAN WOODS DR, SUITE 370
ST. PAUL MN 55121



JOINED: 11 13 90
LAWFIRM FOR CARRIER:
DAVID D BORETT
~~9650 BUSINESS CENTER DR STE~~ 115
~~RANCHO CUCAMONGA~~ CA 9L730

8440 MAPLE PLACE, SUITE 101
RANCHO CUCAMONGA
CALIF 91730
(handwritten addition)

JOINED: 11 13 90
OTHER PARTY:
UNINSURED EMPLOYERS FUND
107 S. BROADWAY ROOM 6116
LOS ANGELES CA 90012

JOINED: 11 13 90
OTHER PARTY:
UNINSURED EMPLOYERS FUND
107 S. BROADWAY ROOM 6116
LOS ANGELES CA 90012

JOINED: 10 03 90
LIEN CLAIM:
LEGAL REPRODUCTIVE SERVICES
2222 W. GARVEY AVE. SOUTH #100
WEST COVINA CA 91790 0000

DATE

V.J. McALPIN - FOR EMPLOYER
McALPIN, DOONAN & SEESE
211 So. CITRUS
COVINA, CA. 91723
(handwritten addition)

SBRMP

APPENDIX D

APPENDIX D

Fax transmittal:
Jan 3'92 12:42 1234 Wooley Pomona TEL 7146227339 P.2

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WILLIAM LILES,	)
	)
Applicant	)
	)
vs.	)
DIRECT TRANSIT INCORPORATED;	)
HARTFORD ACCIDENT AND INDEMNITY COMPANY,	)
	)
Defendant	)
	)

CASE NO. 88 SBR 143098
ORDER DENYING RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation judge with respect thereto. Based on our review of the record, and for the reasons stated in said report which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that said Petition for Reconsideration be, and it hereby is, DENIED.

WORKERS' COMPENSATION APPEALS BOARD

/s/ D.J. Hannigan, DEPUTY

I CONCUR,

/s/ John S. Oda

Not participating
/s/ Richard W. Younkin, DEPUTY

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA SEP 13 1991

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD, EXCEPT LIEN CLAIMANTS

yca /s/ Price L. Harrah

****

TRANSACTION REPORT

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SENDER	PAGES	NOTE
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Jan. 3 '92 12:42 1234 Wooley Pomona TEL 7146227339 P.1

Law Offices of
RICHARD D. WOOLEY
303 WEST MISSION BOULEVARD
POMONA, CALIFORNIA 91766

MICKEY MOUSE CARTOON BORDER

FAX COVER SHEET

TO: DAVID D. BOVETT

ATTN: _____

RE: WILLIAM LILES

FROM: WOOLEY / ECB

NUMBER OF PAGES:
including cover sheet 2

DATE: 1/3/91 TIME: 12:42 p.m.

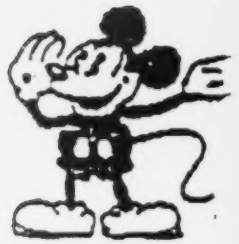
IF YOU HAVE ANY QUESTIONS OR PROBLEMS WITH THIS TRANSACTION, PLEASE CALL US AT THE # BELOW.

(714) 622-1359
FAX: (714) 622-7339

MICKEY MOUSE CARTOON BORDER

MICKEY MOUSE CARTOON BORDER

Law Offices of
RICHARD D. WOOLEY
303 WEST MISSION BOULEVARD
POMONA, CALIFORNIA 91766



FAX COVER SHEET

TO: David Bovett

ATTN:

RE: William Liles

FROM: Wooley / ECB

WORKERS COMPENSATION APPEALS BOARD
OFFICIAL ADDRESS RECORD

PRINTED: 02/07/91
PAGE 1

SERVICE

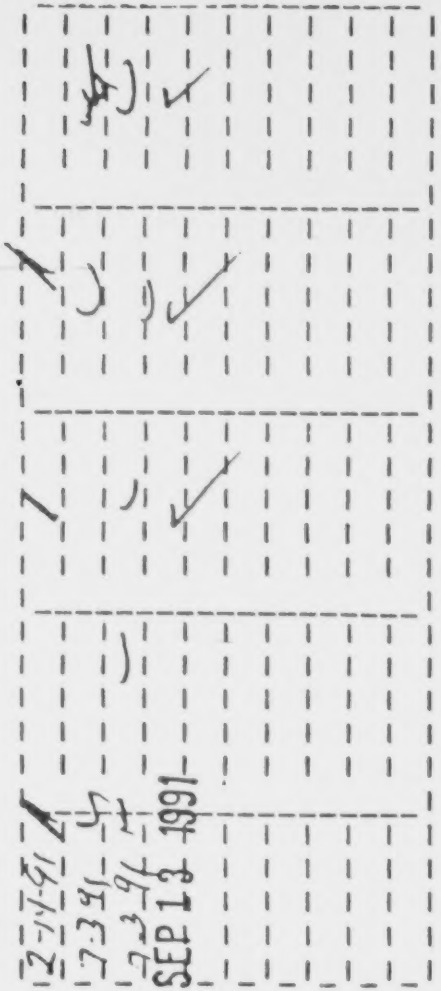
DOC

WCAB CASE NBR: SBR 0143098

INJURED WORKER: 092 34 3595 MOD DATE: 05 03 90
WILLIAM LILES
220 E 51ST STREET
SAN BERNARDINO CA 92404

LAWFIRM FOR INJURED WORKER JOINED: 05 03 90
RICHARD WOOLEY
303 WEST MISSION BLVD
POMONA CA 91766

EMPLOYER: JOINED: 05 03 90
DIRECT TRANSIT
P O BOX 1858
SIOUX CITY IA 51100



INSURER: JOINED: 06 07 90
HARTFORD ACCIDENT & INDEMNITY CO.
MICHAEL BAUMANN, CLAIMS DEPT
2600 EAGAN WOODS DR, SUITE 370
ST. PAUL MN 55121

LAWFIRM FOR CARRIER: JOINED: 11 13 90
DAVID D BORETT
~~9650 BUSINESS CENTER DR STE~~ 115
~~RANCHO CUCAMONGA~~ CA 9L730

8440 MAPLE PLACE, SUITE 10.
RANCHO CUCAMONGA
CALIF 91730

OTHER PARTY: JOINED: 11 13 90
UNINSURED EMPLOYERS FUND
107 S. BROADWAY ROOM 6116
LOS ANGELES CA 90012

LIEN CLAIM: JOINED: 10 03 90
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2222 W. GARVEY AVE. SOUTH #100
WEST COVINA CA 91790 0000

V. J. McALPIN - FOR EMPLOYER
McALPIN, DOONAN & SEESE
211 So. CITRUS
COVINA, CA. 91723

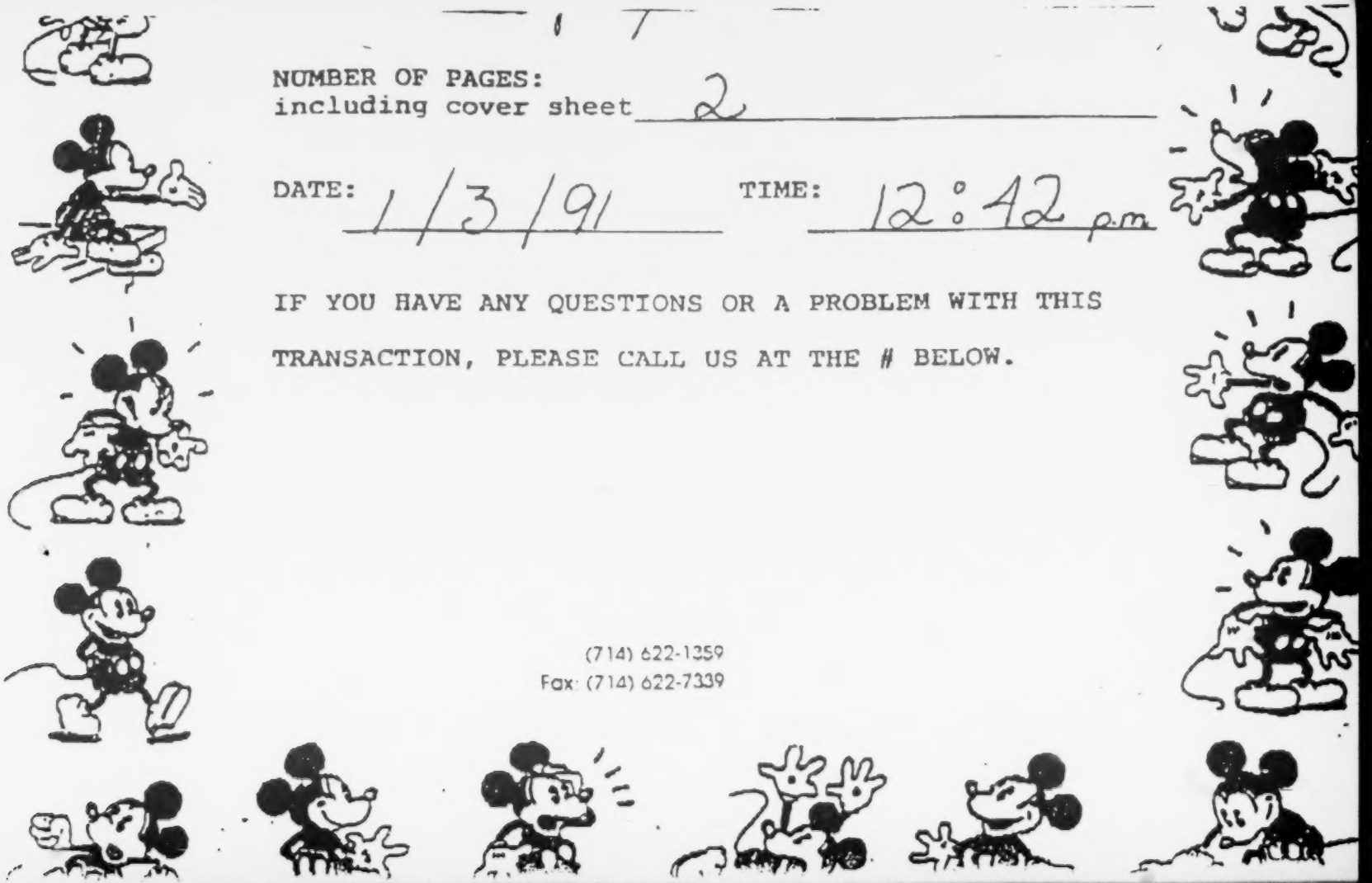
SBRMP

NUMBER OF PAGES:
including cover sheet 2

DATE: 1/3/91 TIME: 12:42 p.m

IF YOU HAVE ANY QUESTIONS OR A PROBLEM WITH THIS TRANSACTION, PLEASE CALL US AT THE # BELOW.

(714) 622-1359
Fax: (714) 622-7339



APPENDIX E

APPENDIX E

In the Supreme Court of the

State of California

HARTFORD ACCIDENT & INDEMNITY COMPANY,	)
Appellant,	)
v.	)
WORKERS' COMPENSATION APPEALS BOARD OF STATE OF CALIFORNIA, DIRECT TRANSIT, INC., et al.,	)
Respondents,	)

No. S025850
(Fourth App. Dist., Div. Two -- No. E010720

Filed AUG 10 1992
Court of Appeal Fourth District

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Hartford Accident & Indemnity Company, the appellant above-named, hereby appeals to the Supreme Court of the United Stated from the final judgement of the Supreme Court of the State of California, denying the petition for review, entered in this action on May 13, 1992.

This appeal is taken pursuant to Title 28 United States Code, § 1257(2).

/s/ David D. Bovett
David D. Bovett
Law Offices of David D. Bovett
1152 N. Mountain Ave., Ste. 104
Upland, CA 91786

PROOF OF SERVICE BY MAIL--§1013a, §2015.5 C.C.P.

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

1152 N. Mountain Ave., Suite 104, Upland, CA 91786

On August 10, 1992, I served the within

Notice of Appeal to the Supreme Court of the United States -- No. S025850 (Fourth App. Dist. Div. Two - No. E010720)

on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at:

Upland, CA

addressed as follows:

McAlpin, Doonan & Seese, A.P.C.
211 S. Citrus Ave., Covina, CA 91723

Richard D. Wooley, Esq.
363 S. Park Ave., Ste. 300, Pomona, CA 91766

Hartford Accident & Indemnity Company
2600 Eagan Woods Drive, Suite 370, St. Paul, MN 55121

Direct Transit, Inc.
P.O. Box 1858, Sioux City, Iowa 51102

William Liles
220 E. 51st Street, San Bernardino, CA, 92404

I certify (or declare) under penalty of perjury,* that the foregoing is true and correct.

Executed on August 10, 1992 at Upland California.

/s/ Lynne McCown
Signature: Lynne McCown

*This proof of service by mail form is signed under penalty of perjury and does not require notarization.

92-604

Supreme Court, U.S.
FILED
SEP 11 1992
OFFICE OF THE CLERK

No._____

In the Supreme Court of the United States

OCTOBER TERM, 1992

HARTFORD ACCIDENT & INDEMNITY COMPANY,
Appellant,

v.

WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA,

Appellee,

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BRIEF IN OPPOSITION OF REAL PARTY IN INTEREST DIRECT TRANSIT, INC.

V. J. McALPIN, ESQ.
State Bar #30549
McALPIN, DOONAN & SEESE
211 S. Citrus Avenue
Covina, CA 91723
(818) 331-6376

Attorney for Real Party In Interest
DIRECT TRANSIT, INC.

September 11, 1992

Westside Law Publishers • Los Angeles, California 90025 • (310) 207-0272

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QUESTIONS PRESENTED

1) Does the alleged lack of receipt of the judgment by Appellant's attorney amount to a denial of due process?

2) Does the established system of notice utilized by the Workers' Compensation Appeals Board fail to satisfy the requirements of due process?

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Appendices:

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B. Order from Court of Appeal filed February 25, 1992 . . . . . B-1

TABLE OF AUTHORITIES CITED

CASES — Page(s)

State Farm Fire & Casualty v. WCAB
(1981) 119 Cal.App.3d 193, 173 Cal.Rptr. 778 . 5
Valley Vista Land Co. v. Nipomo Water & Sewer Co.
(1967) 255 Cal.App.2d 172, 63 Cal.Rptr . . . 5, 6

MISCELLANEOUS CALIFORNIA RULES AND CODES

California Administrative Code
Title 8, §10520 4

No._____

In the Supreme Court of the United States

OCTOBER TERM, 1992

HARTFORD ACCIDENT & INDEMNITY COMPANY,

Appellant,

v.

WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA,

Appellee,

BRIEF IN OPPOSITION OF REAL PARTY IN INTEREST DIRECT TRANSIT, INC.

QUESTIONS PRESENTED

1) DOES THE ALLEGED LACK OF RECEIPT OF THE JUDGMENT BY APPELLANT'S ATTORNEY AMOUNT TO A DENIAL OF DUE PROCESS?

2) DOES THE ESTABLISHED SYSTEM OF NOTICE UTILIZED BY THE WORKERS' COMPENSATION APPEALS BOARD FAIL TO SATISFY THE REQUIREMENTS OF DUE PROCESS?

SUMMARY OF THE FACTS REGARDING NOTICE

This subject appeal arose out of a Workers' Compensation claim filed in the Workers' Compensation Appeals Board by William Liles against defendant employer Direct Transit, Inc., a South Dakota based employer, whose workers' compensation insurance carrier was Hartford Accident & Indemnity Company, hereinafter referred to as "Hartford".

Hartford was originally represented in said proceeding by Krutzsch and Associates, by David D. Bovett, whose address was One Pointe Drive, Suite 410, Brea, California 92621. An answer was filed on behalf of Hartford on February 9, 1990.

Subsequently, David D. Bovett substituted in as attorney of record on November 1, 1990, and listed his office address as 10570 Foothill Boulevard, Suite 130-102, Rancho Cucamonga, California 91730.

On November 9, 1990, David D. Bovett notified all parties of a change of address to 9650 Business Center Drive, Suite 115, Rancho Cucamonga, California 91730.

On February 7, 1991, the Workers' Compensation Appeals Board printed an updated "Official Address Record" in WCAB Case No. SBR 143098. The address for Attorney Bovett at that time was 9650 Business Center Drive, Rancho Cucamonga, California 91730.

On March 1, 1991, David D. Bovett notified all parties of another change of address to 8440 Maple Place, Rancho Cucamonga, California 91730. The change of address was duly noted on the Official Address Record by interlineation.

On May 29, 1991, a trial was held, and the Findings and Award of the Workers' Compensation Judge issued on July 3, 1991. A copy of the Findings and Award was served on parties shown on the Official Address Record which included the Appellant Hartford, and its attorney David D. Bovett.

On July 29, 1991, Appellant filed a Petition for Reconsideration as a first-level administrative appeal from the trial level proceedings. On August 20, 1991, an "Order Extending Time on Petition For Reconsideration" was filed and served by the Workers' Compensation Appeals Board, which Order Extending Time on Petition for Reconsideration was admittedly received by counsel for Hartford on August 22, 1991.

On September 13, 1991, an order denying reconsideration was issued by the Worker's Compensation Appeals Board, Reconsideration Unit, San Francisco, and was served on all parties shown on the official address record, which included Hartford and its attorney David D. Bovett, who alleges he did not receive said order.

Counsel for Hartford has not claimed that his client Hartford failed to receive the Order Denying Reconsideration.

On or about December 2, 1991, and subsequent to the issuance of the Order Denying Reconsideration on September 13, 1991, attorney Bovett again changed his official address to 1152 N. Mountain Avenue, Suite 104, Upland, California, 91786.

On February 18, 1992, attorney for Hartford filed an untimely Petition for Writ of Certiorari to review the decision denying Reconsideration.

On March 20, 1992, the Petition for Writ of Review was denied by the California District Court of Appeals as being untimely filed in that the Petition was filed more than 45 days after the Board denied the Petition for Reconsideration.

On March 30, 1992, a Petition for Review was filed with the Supreme Court of the State of California, which was denied by the Supreme Court of California, InBank, on May 13, 1992.

A copy of a letter from Thomas J. McBirnie, Assistant Secretary of the Workers Compensation Appeals Board, dated March 12, 1992, directed to Stephen M. Kelly, Clerk, Court of Appeal, Fourth Appellate District, Division Two, is attached hereto as Appendix A, and has an "Official Address Record" attached. This Official Address Record clearly indicates that both Hartford and attorney Bovett were served with copies of the Worker's Compensation Appeals Board's Order Denying Reconsideration on September 13, 1991, and that a further copy of the Worker's Compensation Appeals Board's Order was sent to attorney Bovett on December 5, 1991, to the address shown on his letterhead.

DOES THE ESTABLISHED SYSTEM OF NOTICE UTILIZED BY THE WORKERS' COMPENSATION APPEALS BOARD FAIL TO SATISFY THE REQUIREMENTS OF DUE PROCESS?

Appellant contends there is a substantial Federal question because there are allegedly recurring problems and a lack of consistency in the service of documents as prescribed by *California Administrative Code*, Title 8, §10520.

Appellant relies on the cases of *State Farm Fire & Casualty v. WCAB* (1981) 119 Cal.App.3d 193, 173 Cal.Rptr. 778, and *Valley Vista Land Co. v. Nipomo Water & Sewer Co.* (1967) 255 Cal.App.2d 172, 63 Cal.Rptr. 78. However, each of these cases are distinguishable from the case at hand.

In the *State Farm* case, the Court of Appeals, Fourth District of California, held that a Petition for Review which was filed within 45 days after insurer first received notice of Board's Order was timely filed, even though the Order denying reconsideration was filed on June 10, 1980, and the petition for review was not filed until December 10, 1980.

The attorney for *State Farm* directed letters to the Board about the matter on July 21, 1980, September 12, 1980, and on October 13, 1980. This was supported by declarations from appropriate persons representing *State Farm* and further verified by the fact that no timely notice was received by the applicant's attorney either.

However, the Board stated to the Court of Appeals in a letter dated December 31, 1980, that although its record of service indicates that service by mail was made on June 10, 1980, the Board did not question *State Farm's* assertion that it did not obtain notice of the order until October 27, 1980, and no objection was filed by the Board.

In the present case, the letter from the assistant secretary of the WCAB dated March 12, 1992, attached hereto as Appendix A, acknowledges the inquiry by Attorney Bovett dated November 22, 1991. The address shown on that letter was 8440 Maple Place, Rancho Cucamonga, California 91730.

On December 5, 1991, the supervisor of the WCAB's "control unit" sent Attorney Bovett *another* copy of the WCAB order denying reconsideration. The address to which this copy was sent was the address shown on Attorney Bovett's letterhead and the Board's copy of the official address record of 8440 Maple Place, Rancho Cucamonga, California 91730.

It is apparent that the Board gave Appellant an additional opportunity to be heard when it sent the second order denying reconsideration on December 5, 1991, but Appellant's Petition For Review was not filed until February 18, 1992, which was well beyond the 45 day period allowed for the filing of such a petition. Therefore, the petition filed by Appellant on February 18, 1992 was not timely.

In the case of *Valley Vista Land Co. v. Nipomo Water & Sewer Co.*, supra, the Appeals Court found that the notice of entry of judgment was misaddressed to one of the parties.

Appellant in the present case does not present any allegations that the Notice of the Order Denying Reconsideration was misaddressed. Appellant's attorney alleges only that he never received notice until he received a Fax notice from Appellant's counsel, which he received on January 3, 1992.

In the *Valley Vista* case, the fact of the misdirected mail was brought to the attention of the Clerk and new notices were sent out. In the present case, on December 5, 1991, the supervisor of the WCAB's "Control Unit" sent a second copy of the Order Denying Reconsideration to attorney Bovett's address shown on his letterhead. No Petition was filed in a timely fashion.

Additionally, Appellant's Petition For Review was not summarily denied by the Fourth Appellate District and Petitioner Hartford was given an opportunity to file a supplemental declaration concerning counsel's contact with the Board and his changed addresses. This declaration was filed by Counsel for Hartford, and after consideration by the Appellate Court, Appellant's Petition was denied as being untimely. See Appendix B.

CONCLUSION

It is apparent from a careful study of the record that Appellant was given notice of the Order Denying Reconsideration, and that there has been no denial of Due Process.

Therefore, the Writ should be denied.

Dated: September 11, 1992

Respectfully submitted,

V. J. McALPIN
McALPIN, DOONAN & SEESE
211 S. Citrus
Covina, CA 91723
Attorneys for Real Party in Interest
DIRECT TRANSIT INC.

APPENDICES

APPENDIX A

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Workers' Compensation Appeals Board
455 Golden Gate Avenue
San Francisco, CA 94102
Tel: (415) 703-1870 ATSS (Calnet): 593-1870

PETE WILSON, Governor

March 12, 1992

Stephen M. Kelly
Clerk, Court of Appeal
Fourth Appellate District
Division Two
303 West Fifth Street
San Bernardino, California 92401

RE: 4th Civil No. E010720, Hartford Accident & Indemnity Co. v. WCAB, William Liles, et al. (WCAB Case No. 88 SBR 143098)

Dear Sir:

On February 25, 1992, the Court invited the parties in the above-referenced matter to file additional information relating to service of the WCAB's order denying reconsideration on David D. Bovett, attorney for Hartford Accident & Indemnity Company. Respondent WCAB offers the following in response to the Court's invitation.

On February 7, 1991, the WCAB printed an updated "Official Address Record" in WCAB Case No. SBR 143098. The address shown for attorney Bovett at that time was 9650 Business Center Drive in Rancho Cucamonga.

On March 7, 1991, attorney Bovett filed a notice of change of address effective March 1, 1991. The new address stated was 8440 Maple Place in Rancho Cucamonga. This change was entered on the WCAB's Official Address Record. However, the exact date when the change was entered is not shown.

On July 3, 1991, the workers' compensation judge filed and served his decision. The WCAB's Official Address Record indicates that service of the decision was made on attorney Bovett.

On July 29, 1991, attorney Bovett filed a petition for reconsideration of the workers' compensation judge's decision.

On August 20, 1991, the WCAB filed and served an Order Extending Time on Petition(s) for Reconsideration. That document indicates that service was made on attorney Bovett at 8440 Maple Place in Rancho Cucamonga.

On September 13, 1991, the WCAB filed and served its Order Denying Reconsideration. The Official Address Record indicates that service was made on attorney Bovett at 8440 Maple Place in Rancho Cucamonga. Service also was made on Hartford Accident & Indemnity Company, 2600 Eagan Woods Drive, St. Paul Minnesota. Enclosed herewith is copy of the Official Address Record made at the time of service of the WCAB's order.

On November 22, 1991, attorney Bovett wrote to the WCAB in San Francisco to state that he had not received any word from the Board since August 20, 1991. The address shown on that letter was 8440 Maple Place in Rancho Cucamonga.

On December 5, 1991, the supervisor of the WCAB's "control unit" sent attorney Bovett another copy of the WCAB's Order Denying Reconsideration. The address to which this copy was sent evidently was the address shown on attorney Bovett's letterhead and the

Board's copy of the Official Address Record, 8440 Maple Place, Rancho Cucamonga.

Meanwhile, on December 2, 1991, attorney Bovett filed another notice of change of address with the WCAB in San Bernardino. The address shown, effective November 20, 1991, was 1152 North Mountain Avenue, Upland, California. A second copy of this notice was filed with the WCAB in San Francisco on December 3, 1991.

What the foregoing indicates is (1) that both Hartford and attorney Bovett were served with copies of the WCAB's Order Denying Reconsideration on September 13, 1991, at what apparently were their correct addresses; and (2) that attorney Bovett was sent a further copy of the WCAB's order on December 5, 1991, to the address shown on his letterhead. This would appear to indicate that Hartford's petition for writ review was not timely filed.

Very truly yours,

Thomas J. McBirnie
Assistant Secretary, WCAB

TJM/ncv

Encl.

cc with enclosure:

David D. Bovett, Esq.
1152 N. Mountain Avenue
Suite 104
Upland, CA 91786

Richard D. Wooley, Esq.
303 West Mission Blvd.
Pomona, CA 91766

McAlpin, Doonan & Seese
211 So. Citrus Avenue
Covina, CA 91723

WORKERS COMPENSATION APPEALS BOARD
OFFICIAL ADDRESS RECORD

PRINTED: 02/07/91
PAGE 1

SERVICE

DOC

DATE

WCAB CASE NBR: SBR 0143098

INJURED WORKER: 092 34 3595 MOD DATE: 05 03 90
WILLIAM LILES
220 E 51ST STREET
SAN BERNARDINO CA 92404

LAWFIRM FOR INJURED WORKER JOINED: 05 03 90
RICHARD WOOLEY
303 WEST MISSION BLVD
POMONA CA 91766

EMPLOYER: JOINED: 05 03 90
DIRECT TRANSIT
P O BOX 1858
SIOUX CITY IA 51100

INSURER: JOINED: 06 07 90
HARTFORD ACCIDENT & INDEMNITY CO.
MICHAEL BAUMANN, CLAIMS DEPT
2600 EAGAN WOODS DR, SUITE 370
ST. PAUL MN 55121

LAWFIRM FOR CARRIER: JOINED: 11 13 90
DAVID D BORETT
~~9650 BUSINESS CENTER DR STE 115~~ 8440 Monte Place, Suite 101
~~RANCHO CUCAMONGA~~ CA 91730 Rancho Cucamonga Calif 91730

OTHER PARTY: JOINED: 11 13 90
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107 S. BROADWAY ROOM 6116
LOS ANGELES CA 90012

LIEN CLAIM: JOINED: 10 03 90
LEGAL REPRODUCTIVE SERVICES
2222 W. GARVEY AVE. SOUTH #100
WEST COVINA CA 91790 0000

SEP 11 1991

V. J. McAlpin - For Employer
McAlpin, Doonan & Geese
211 So. Citrus
Covina, CA. 91723

SBRMP

APPENDIX B

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

FILED
FEB 25 1992
COURT OF APPEAL FOURTH DISTRICT

HARTFORD ACCIDENT & INDEMNITY COMPANY, Petitioner,	)	
v.	)	
WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA; WILLIAM LILES, DIRECT TRANSIT, INC., Respondent.	)	E010720 WCAB NO. 88 SBR 143098

THE COURT:

Good cause appearing therefor,

Respondents are invited to file a response to the petition for writ of review on file herein on or before March 16, 1992.

It appears that this court might lack jurisdiction to consider the petition as it was not filed within 45 days of the filing of the Workers' Compensation Appeals Board's order denying the petition for reconsideration. (Lab. Code, § 5950; *Southwest Airlines v. Workers' Comp. Appeals Bd.* (1991) 234 Cal.App.3d 1421.) We note that the Board's order indicating that service was made on all parties listed on the official address record is prima facie evidence that

service was properly made. In the absence of a showing that the service was defective (cf. *Valley Vista Land Co. v. Nipomo Water & Sewer Co.* (1967) 255 Cal.App.2d 172), this court is without jurisdiction to consider the petition. (Cf. *Malloy v. Workers' Comp. Appeals Bd.* (C011921, December 24, 1991) ____ Cal.App.3d. ____ [91 Daily Journal D.A.R. 16098]; *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660.) Respondents may wish to address these points in its response.

Petitioner is invited to file a supplemental declaration which states whether counsel was on the official service list of the board and what service address he provided the Board. Counsel shall specify any and all contact between him and the Board, including phone conversations as well as written correspondence, following the receipt of the latter's order extending time on petition for reconsideration. He shall also indicate if he has changed addresses during this proceeding and what notice, if any, he has provided to the Board of such changes. This declaration shall be filed on or before March 6, 1992.

HOLLENHORST

Acting P.J.

cc:

W.C.A.B.
P.O. Box 6759
San Francisco, CA 94101 (2)

W.C.A.B.
303 W. Third St., #640
San Bernardino, CA 92401

McAlpin, Doonan & Seese
211 S. Citrus Avenue
Covina, CA 91723

Richard Wooley
303 W. Mission Blvd.
Pomona, CA 91766

Hartford Accident & Ind. Co.
2600 Eagan Woods Dr., #370
Paul, MN 55121

David D. Bovett
1152 N. Mountain St.
Ave., #104
Upland, CA 91786

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on September 11, 1992, I served the within *Brief In Opposition of Real Party In Interest Direct Transit, Inc.* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(By Express Mail: Original and Forty Copies)

DAVID D. BOVETT
Law Offices of David D. Bovett
1152 N. Mountain Avenue
Suite 104
Upland, California 91786

RICHARD D. WOOLEY
363 S. Park Avenue
Suite 300
Pomona, California 91766

Hartford Accident & Indemnity Company
2600 Eagan Woods Drive
Suite 370
St. Paul, MN 55121

Direct Transit, Inc.
P. O. Box 1858
Sioux City, Iowa 51102

William Liles
220 E. 51st Street
San Bernardino, CA 92404

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 11, 1992, at Los Angeles, California.

Betty J. Malloy
(Original Signed)